



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2009 REGULAR SESSION

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SENATE BILL NO. 148

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WEDNESDAY, MARCH 4, 2009

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The following bill was reported to the House from the Senate and ordered to be printed.

RECEIVED AND FILED  
DATE March 20, 2009  
5:43pm  
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TREY GRAYSON  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY L. Adles

AN ACT relating to sexual and violent offenders.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 160.380 is amended to read as follows:

(1) As used in this section:

(a) "Contractor" means an adult who is permitted access to school grounds pursuant to a current or prospective contractual agreement with the school, school board, school district, or school-affiliated entity, at times when students are present. The term "contractor" includes an employee of a contractor;

(b) "Relative" means father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law; and

(c) "Vacancy" means any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required. However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new position for which certification is required, a vacancy shall not exist, unless certified positions remain open after compliance with those procedures.

(2) (a) All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. All employees of the local district shall have the qualifications prescribed by law and by the administrative regulations of the Kentucky Board of Education and of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the superintendent for any school year at any

1 time after February 1 preceding the beginning of the school year. No  
2 superintendent of schools shall appoint or transfer himself or herself to  
3 another position within the school district.

4 (b) When a vacancy occurs in a local school district, the superintendent shall  
5 notify the chief state school officer thirty (30) days before the position shall be  
6 filled. The chief state school officer shall keep a registry of local district  
7 vacancies which shall be made available to the public. The local school  
8 district shall post position openings in the local board office for public  
9 viewing.

10 (c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent  
11 disruption of necessary instructional or support services of the school district,  
12 the superintendent may seek a waiver from the chief state school officer. If the  
13 waiver is approved, the appointment shall not be made until the person  
14 recommended for the position has been approved by the chief state school  
15 officer. The chief state school officer shall respond to a district's request for  
16 waiver or for approval of an appointment within two (2) working days.

17 (d) When a vacancy occurs in a local district, the superintendent shall conduct a  
18 search to locate minority teachers to be considered for the position. The  
19 superintendent shall, pursuant to administrative regulations of the Kentucky  
20 Board of Education, report annually the district's recruitment process and the  
21 activities used to increase the percentage of minority teachers in the district.

22 (e) No relative of a superintendent of schools shall be an employee of the school  
23 district. However, this shall not apply to a relative who is a classified or  
24 certified employee of the school district for at least thirty-six (36) months  
25 prior to the superintendent assuming office, or prior to marrying a relative of  
26 the superintendent, and who is qualified for the position the employee holds.  
27 A superintendent's spouse who has at least twenty (20) years of service in

1 school systems may be an employee of the school district. A superintendent's  
 2 spouse who is employed under this provision shall not hold a position in  
 3 which the spouse supervises certified or classified employees. A  
 4 superintendent's spouse may supervise teacher aides and student teachers.  
 5 However, the superintendent shall not promote a relative who continues  
 6 employment under an exception of this subsection.

7 (f) No superintendent shall employ a relative of a school board member of the  
 8 district, unless on July 13, 1990, the board member's relative is an employee  
 9 of the district, the board member is holding office, and the relative was not  
 10 initially hired by the district during the tenure of the board member. A relative  
 11 employed in 1989-90 and initially hired during the tenure of a board member  
 12 serving on July 13, 1990, may continue to be employed during the remainder  
 13 of the board member's term. However, the superintendent shall not promote  
 14 any relative of a school board member who continues employment under the  
 15 exception of this subsection.

16 (g) 1. No principal's relative shall be employed in the principal's school, except  
 17 a relative who is not the principal's spouse and who was employed in the  
 18 principal's school during the 1989-90 school year.

19 2. No spouse of a principal shall be employed in the principal's school,  
 20 except:

21 a. A principal's spouse who was employed in the principal's school  
 22 during the 1989-90 school year for whom there is no position for  
 23 which the spouse is certified to fill in another school operated in  
 24 the district; or

25 b. A principal's spouse who was employed in the 1989-90 school year  
 26 and is in a school district containing no more than one (1)  
 27 elementary school, one (1) middle school, and one (1) high school.

1           3. A principal's spouse who is employed in the principal's school shall be  
2           evaluated by a school administrator other than the principal.

3           4. The provisions of KRS 161.760 shall not apply to any transfer made in  
4           order to comply with the provisions of this paragraph.

5   (3) No superintendent shall employ in any position in the district any person who is a  
6       violent offender or has been convicted of a sex crime as defined by KRS 17.165  
7       which is classified as a felony. The superintendent may employ, at his discretion,  
8       persons convicted of sex crimes classified as a misdemeanor.

9   (4) (a) A superintendent shall require a national and state criminal background check  
10       on all new certified hires in the school district and student teachers assigned  
11       within the district. Excluded are certified individuals who were employed in  
12       another certified position in a Kentucky school district within six (6) months  
13       of the date of hire and who had previously submitted to a national and state  
14       criminal background check for the previous employment.

15       (b) The superintendent shall require that each new certified hire and student  
16       teacher, as set forth in paragraph (a) of this subsection, submit to a national  
17       and state criminal history background check by the Department of Kentucky  
18       State Police and the Federal Bureau of Investigation.

19       (c) All fingerprints requested under this section shall be on an applicant  
20       fingerprint card provided by the Department of Kentucky State Police. The  
21       fingerprint cards shall be forwarded to the Federal Bureau of Investigation  
22       from the Department of Kentucky State Police after a state criminal  
23       background check is conducted. The results of the state and federal criminal  
24       background check shall be sent to the hiring superintendent. Any fee charged  
25       by the Department of Kentucky State Police and the Federal Bureau of  
26       Investigation shall be an amount no greater than the actual cost of processing  
27       the request and conducting the search.

1 (d) The Education Professional Standards Board may promulgate administrative  
2 regulations to impose additional qualifications to meet the requirements of  
3 Public Law 92-544.

4 (5) A superintendent shall require a state criminal background check on all classified  
5 initial hires.

6 (a) The superintendent shall require that each classified initial hire submit to a  
7 state criminal history background check by the Department of Kentucky State  
8 Police. If an applicant has been a resident of Kentucky twelve (12) months or  
9 less, the superintendent may require a national criminal history background  
10 check as a condition of employment.

11 (b) Any request for records under this section shall be on an applicant fingerprint  
12 card provided by the Department of Kentucky State Police. The results of the  
13 state criminal background check and the results of the national criminal  
14 history background check, if requested under the provisions of paragraph (a)  
15 of this subsection, shall be sent to the hiring superintendent. Any fee charged  
16 by the Department of Kentucky State Police shall be an amount no greater  
17 than the actual cost of processing the request and conducting the search.

18 (6) The superintendent may require a contractor, volunteer, or visitor to submit to a  
19 national and state criminal history background check by the Department of  
20 Kentucky State Police and the Federal Bureau of Investigation. Any request for  
21 records under this section shall be on an applicant fingerprint card provided by the  
22 Department of Kentucky State Police. The results of the state criminal background  
23 check and the results of the national criminal history background check, if  
24 requested, shall be sent to the hiring superintendent. Any fee charged by the  
25 Department of Kentucky State Police shall be an amount no greater than the actual  
26 cost of processing the request and conducting the search.

27 (7) (a) If a school term has begun and a certified or classified position remains

1 unfilled or if a vacancy occurs during a school term, a superintendent may  
2 employ an individual, who will have supervisory or disciplinary authority over  
3 minors, on probationary status pending receipt of the criminal history  
4 background check. Application for the criminal record of a probationary  
5 employee shall be made no later than the date probationary employment  
6 begins.

7 (b) Employment shall be contingent on the receipt of the criminal history  
8 background check documenting that the probationary employee has no record  
9 of a sex crime nor as a violent offender as defined in KRS 17.165.

10 (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary,  
11 probationary employment under this section shall terminate on receipt by the  
12 school district of a criminal history background check documenting a record  
13 of a sex crime or as a violent offender as defined in KRS 17.165 and no  
14 further procedures shall be required.

15 (d) The provisions of KRS 161.790 shall apply to terminate employment of a  
16 certified employee on the basis of a criminal record other than a record of a  
17 sex crime or as a violent offender as defined in KRS 17.165.

18 (8) (a) Each application or renewal form, provided by the employer to an applicant  
19 for a classified position, shall conspicuously state the following: "FOR THIS  
20 TYPE OF EMPLOYMENT, STATE LAW REQUIRES A STATE  
21 CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF  
22 EMPLOYMENT. UNDER CERTAIN CIRCUMSTANCES, A NATIONAL  
23 CRIMINAL HISTORY BACKGROUND CHECK MAY BE REQUIRED AS  
24 A CONDITION OF EMPLOYMENT."

25 (b) Each application or renewal form, provided by the employer to an applicant  
26 for a certified position, shall conspicuously state the following: "FOR THIS  
27 TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND

STATE CRIMINAL HISTORY BACKGROUND CHECK AS A  
CONDITION OF EMPLOYMENT."

(c) Each application form for a district position shall require the applicant to:

1. Identify the states in which he or she has maintained residency, including the dates of residency; and
2. Provide picture identification.

(9) The provisions of subsections (4), (5), (6), (7), and (8) of this section shall apply to a nonfaculty coach or nonfaculty assistant as defined under KRS 161.185.

(10) A school-based decision making council parent member, as defined under KRS 160.345, shall submit to a state and national fingerprint-supported criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation. The results of the state criminal history background check and the results of the national criminal history background check, if requested, shall be sent to the district superintendent. Any fee charged by the Department of Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search. A parent member may serve prior to the receipt of the criminal history background check report but shall be removed from the council on receipt by the school district of a report documenting a record of a sex crime or criminal offense against a victim who is a minor as defined in KRS 17.500 or as a violent offender as defined in KRS 17.165 and no further procedures shall be required.

(11) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, when an employee of the school district is charged with any offense which is classified as a felony, the superintendent may transfer the employee to a second position until such time as the employee is found not guilty, the charges are dismissed, the employee is terminated, or the superintendent determines that further personnel action is not required. The employee shall continue to be paid at the same



rate of pay he or she received prior to the transfer. If an employee is charged with an offense outside of the Commonwealth, this provision may also be applied if the charge would have been treated as a felony if committed within the Commonwealth. Transfers shall be made to prevent disruption of the educational process and district operations and in the interest of students and staff and shall not be construed as evidence of misconduct.

➔Section 2. KRS 17.545 is amended to read as follows:

(1) No registrant, as defined in KRS 17.500, shall reside within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility. The measurement shall be taken in a straight line from the nearest property line of the school to the nearest property line of the registrant's place of residence.

(2) No registrant, as defined in KRS 17.500, nor any person residing outside of Kentucky who would be required to register under KRS 17.510 if the person resided in Kentucky, shall be on the clearly defined grounds of a high school, middle school, elementary school, preschool, or licensed day care facility, except with the advance written permission of the school principal, the school board, or the day care director that has been given after full disclosure of the person's status as a registrant or sex offender from another state and all registrant information as required in KRS 17.500.

(3) For purposes of this section:

(a) The registrant shall have the duty to ascertain whether any property listed in subsection (1) of this section is within one thousand (1,000) feet of the registrant's residence; and

(b) If a new facility opens, the registrant shall be presumed to know and, within ninety (90) days, shall comply with this section.

~~(4)~~(3) Any person who violates subsection (1) of this section shall be guilty of:

(a) A Class A misdemeanor for a first offense; and

(b) A Class D felony for the second and each subsequent offense.

~~(5)~~~~(4)~~ Any registrant residing within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility on July 12, 2006, shall move and comply with this section within ninety (90) days of July 12, 2006, and thereafter, shall be subject to the penalties set forth under subsection (3) of this section.

~~(6)~~~~(5)~~ This section shall not apply to a youthful offender probated or paroled during his or her minority or while enrolled in an elementary or secondary education program.

➔Section 3. KRS 17.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 17.320 to 17.340 shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500).

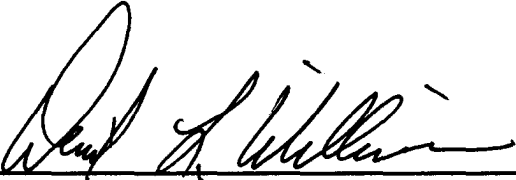
(2) Any public official or employee who knowingly or intentionally makes, or causes to be made, a false return of information to the department shall be punished by confinement in jail for not more than ninety (90) days, by a fine not exceeding five hundred dollars (\$500), or both.

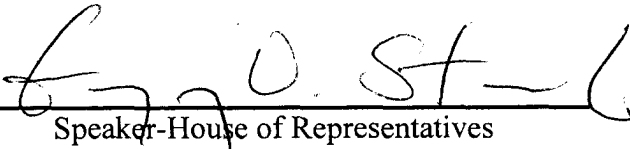
(3) (a) Any child-care center which violates KRS 17.165(4) or child-care provider that violates KRS 17.165(5) may be liable for license or certification revocation and the imposition of a civil penalty of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000) to be imposed and collected by the Cabinet for Health and Family Services; and

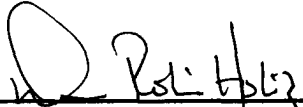
(b) In addition to penalties listed in this subsection, any child-care center which violates KRS 17.165(4) or child-care provider that violates KRS 17.165(5) shall be fined not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000).

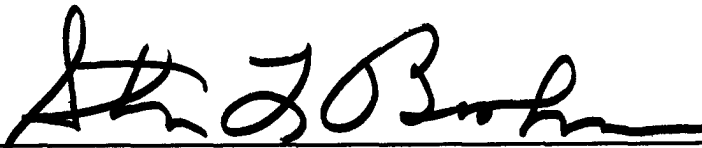
**(4) Any person who violates the provisions of subsection (2) of Section 2 of this Act**

1 *shall be guilty of a Class A misdemeanor.*

  
\_\_\_\_\_  
President of Senate

  
\_\_\_\_\_  
Speaker-House of Representatives

Attest:   
\_\_\_\_\_  
Chief Clerk of Senate

Approved   
\_\_\_\_\_  
Governor

Date 3-20-09